IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3973 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAIRMAN/SECRETARY - Petitioner(s)
Versus
TATE OF GUJARAT & 6 - Respondent(s)

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Appearance :
MR CC BHALJA for Petitioner(s) : 1,
MR SATYAM CHHAYA, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 7.
MS RV ACHARYA for Respondent(s) : 7,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 22/03/2007

ORAL JUDGMENT

1. The petitioner has preferred the petition challenging the legality and validity of the

order dated 21.3.1997 (Annexure “A”) passed by the State Government in revisional jurisdiction, whereby the N.A. permission has been cancelled, which was granted by the Taluka Development Officer.

2. Heard Mr.Bhalja, learned Counsel for the petitioner, Mr.Chhaya, learned AGP for the State Authorities and Mr.Ramakrishnan with Mrs.Acharya, learned Counsel for Respondent No.7. The Other private respondents have chosen not to appear. With the consent of the learned Counsel, the matter is finally heard today.

3. This Court, on 20.2.2007, had passed the following order:-

> “ Draft amendment granted.
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> 2. Mr.Bhalja, learned Counsel for the petitioner, states that the petitioner is ready to pay the cost for compensating the delay, if any, if this Court is inclined to consider the matter, without prejudice to the rights and contentions of the petitioner that no opportunity was given to the petitioner by the State Government before

passing the impugned order. He further submitted that as per the statement made in the petition read with the draft amendment, the petitioner was not aware about the order even at the time when the entry No.3112 was mutated in the revenue record based on the order of the State Government. Mr.Bhalja further states that as per the petitioner the land was old tenure land, whereas the State Government has found that it was new tenure. In the event it is finalized as new tenure, the petitioner is ready to pay the premium with the compensatory penal interest to the Government from the date of transaction till actual payment.

3. In view of the above, **Notice returnable on 9.3.2007.** The petitioner shall deposit an amount of Rs.25,000/- towards probable cost for compensating the delay, if ultimately, found by this Court. The said amount shall be deposited within a period of ten days from today with this Court. Direct service is permitted."

4. Today when the matter is further taken up for hearing, Mr.Bhalja, learned Counsel has declared

before the Court that the amount of Rs.25,000/- is deposited on 23.2.2007.

5. On behalf of the State authorities, Mr.Chhaya, learned AGP states, under the instructions of Mr.D.M.Mojeendra, Mamlatdar – Special Secretary (Appeals), upon verification of record, that the petitioner was not heard by the State Government when the revisional jurisdiction was exercised. He further states that the communication dated 13.6.1997 was addressed by the Mamlatdar, Sanand Taluka pursuant to the order passed by the State Government for cancellation of N.A. permission and the mutation of the entry on that basis. He submitted that even when the mutation was recorded vide Entry No.31/2 dated 14.6.1997 in the revenue record, the order was only implemented and no notices were served to the petitioner.

6. Under the above circumstances, it is apparent that the petitioners had purchased the land, which was part of the land in question and even in the revenue record, the name of the petitioner was reflected, no order could have been passed by the State Government without giving opportunity of hearing to the petitioner,

who was to be ultimately affected by the outcome of the exercise of the revisional power.

7. Under the above circumstances, the impugned order passed by the State Government deserves to be quashed on the ground of breach of principles of natural justice. It is true that the order came to be passed as back as in the year 1997 and the petition is preferred by the petitioner in the year 2007, roughly after a period of about more than nine hears. However, as the contention of the petitioner is that no opportunity of hearing was given and the petitioner was not aware about the same and so far as the opportunity aspect is concerned, the position is clear as stated on behalf of the State Government, a lenient view on the aspect of delay in preferring the petition on the part of the petitioner can be taken and default, if any, for such delay can be compensated by imposing suitable cost to the respondents. On the aspects of quantum of the cost, the learned Counsel appearing for both the sides have left the matter to the Court.

8. Under the above circumstances, I find that the following directions shall meet with the ends of

justice:-

(a) The impugned order dated 21.3.1997 – Annexure “A” passed by the State Government is quashed and set aside on the ground of breach of principles of natural justice on condition that the petitioner pays the cost of Rs.10,000/- to the State Government and Rs.5,000/- to respondent No.7 for the delay in preferring the present petition. As the amount of Rs.25,000/- has already been deposited by the petitioner pursuant to the order passed in the present proceedings, the State Authority as well as respondent No.7 shall be at liberty to withdraw the amount through the office of the Government Pleader or their Advocate concerned, as the case may be. Office shall refund the amount of Rs.10,000/- to the petitioner.

(b) It is further directed that the revisional proceedings No.7 of 1995 shall stand restored to the file of the State Government and it would be open to the State

Government to give opportunity of hearing to the petitioner and other affected parties, if any, and to pass appropriate orders in accordance with law, after giving opportunity of hearing to all concerned, preferably within a period of six months from the date of receipt of the order of this Court. Until fresh order is passed by the State Government, status-quo as prevailing over the land in question shall be maintained by both the sides.

9. The petition is allowed in terms of the aforesaid directions. Rule partly made absolute accordingly. Direct service is permitted.

22.3.2007 **(Jayant Patel, J.)**

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